

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RODERICK C. DEMMING,

Plaintiff,

V.

## CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.,

Defendant.

C14-1017 TSZ

## ORDER AND JUDGMENT

THIS MATTER comes before the Court on plaintiff's unopposed motions for final approval of class action settlement, docket no. 55, and for attorney's fees, costs, and class representative incentive award, docket no. 45. Having reviewed all papers filed in connection with such motions,<sup>1</sup> and having conducted a final settlement approval hearing on June 2, 2017, at which no class member, and no attorney other than appointed Class Counsel and counsel for defendant, appeared to object to or comment on the proposed class action settlement, see Minutes (docket no. 56), the Court enters the following Order and Judgment.

<sup>1</sup> At the Court’s direction, counsel for defendant filed supplemental declarations indicating that notices pursuant to 28 U.S.C. § 1715 were served on May 11, 2017, *see* Van Wieren Decl. at ¶ 2, Ex. A to Fritts Decl. (docket no. 57-1), and that no timely objection has been received from any attorney general’s office, *see* Ray Decl. at ¶ 6 (docket no. 60).

1 On September 7, 2016, the Court certified for settlement purposes a class and two  
2 subclasses, appointed plaintiff Roderick C. Demmings as the Class Representative, and  
3 appointed Matthew A. Dooley and Anthony R. Pecora of O'Toole, McLaughlin, Dooley  
4 & Pecora Co., LPA and Justin M. Baxter of Baxter & Baxter, LLP as Class Counsel.  
5 Order (docket no. 40). On November 15, 2016, the Court approved a form of notice,  
6 subject to a number of specific changes, to be sent via U.S. mail to all class members.  
7 See Minute Order (docket no. 42). Notices were mailed on February 10, 2017, by the  
8 Settlement Administrator, Tilghman Co. Tilghman Decl. at ¶ 8 (docket no. 55-1). Of the  
9 4,519 notices sent, 505 were returned as undeliverable. *Id.* at ¶ 9. Ten of the returned  
10 notices were re-mailed, resulting in a notice distribution rate of just over 89%. See id.  
11 Other than using the address correction service of the United States Postal Service, no  
12 effort was made to locate the 495 class members whose notices were returned. See id. at  
13 ¶¶ 8-9.<sup>2</sup> Since February 10, 2017, the Settlement Administrator has maintained a website  
14 for this matter (www.CHClassAction.com), as well as a toll-free telephone number  
15 connected to an automated recording containing general information about the proposed  
16 settlement. *Id.* at ¶¶ 10-11. No objection to the proposed class action settlement was  
17 timely made, but eighteen (18) opt-out notices were received. *Id.* at ¶¶ 12-13.

18 Three (3) individuals have requested exclusion from the Class and Subclass I:  
19 Michael Anthony Hawley, Bryon Francis Kerker, and Jason Lee. See id. at Ex. C.  
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21 <sup>2</sup> Because more than seven percent (7%) of the class notices were not delivered, Class Counsel could have  
22 sought an additional notice process. Stip. of Settlement at ¶ 4.3 (docket no. 38). Class Counsel did not,  
however, do so.

1 Fifteen (15) individuals have requested exclusion from the Class and Subclass II: Erik  
2 Alexander Box, Timothy Sherman Branch, Leonardo Arreguin Camarillo, Andrew  
3 Farley, Darius Marquise Haynes, Kenneth Wayne Johnson, Patricia Ann Landry, Jeffery  
4 Leyk, Jerry Lisiecki, Casey Jon McGinnis, Mark Edward Mounts, Stacey Shay Ramsey,  
5 James Brendan Reilly, David Streeter, and Ryan Michael Wilson. See id. Accordingly,  
6 this Order and Judgment shall not bind or affect any of the above-named eighteen (18)  
7 individuals.

8 In light of the foregoing information, the Court ORDERS as follows:

9 1. Plaintiff's unopposed motion for final approval of class action settlement,  
10 docket no. 55, is GRANTED. The Court is satisfied that class members received the  
11 "best notice that is practicable under the circumstances." See Fed. R. Civ. P. 23(c)(2)(B).  
12 With respect to the 495 class members for whom current contact information is  
13 unavailable, the Court is persuaded that such individuals' rights can be adequately  
14 protected by the procedures set forth in this Order and Judgment. The Court therefore  
15 APPROVES the Stipulation of Settlement, docket no. 38, as being, in all respects, fair,  
16 reasonable, adequate, and in the best interests of the Class and both Subclasses, and the  
17 result of non-collusive, arm's-length negotiations.

18 2. On or before the Effective Date,<sup>3</sup> defendant Clean Harbors Environmental  
19 Services, Inc. shall pay \$644,500 into a Settlement Fund accessible to the Settlement  
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21 <sup>3</sup> "Effective Date" is defined in the Stipulation of Settlement to mean "the first day following the last of  
22 the following occurrences: (i) issuance of the Court's final approval order; (ii) if an objection has been  
made to final approval of settlement, the date on which the objector's time to appeal the Final Approval

1 Administrator, who shall mail a check in the applicable amount, within ten (10) days after  
2 the Effective Date, to each class member who has not opted out of the Settlement and for  
3 whom contact information is available. For members of Subclass I, such check shall be  
4 in the amount of \$295 minus the pro rata share of attorney's fees and costs, incentive  
5 award, and settlement administration costs (estimated to be \$112.01). For members of  
6 Subclass II, such check shall be in the amount of \$40 minus the pro rata share of  
7 attorney's fees and costs, incentive award, and settlement administration costs (estimated  
8 to be \$15.19).

9       3. Plaintiff's unopposed motion for attorney's fees, costs, and class  
10 representative incentive award, docket no. 45, is GRANTED. Class Representative  
11 Roderick C. Demmings is AWARDED \$10,000 as an incentive fee, which is a fair and  
12 reasonable amount to compensate him for the time, effort, and risk he undertook in  
13 service to the Class and Subclasses. Class Counsel are AWARDED attorney's fees and  
14 costs in the amount of \$214,833.33, which represents one-third (1/3) of the Settlement  
15 Fund, and is a fair and reasonable amount in light of the work that Class Counsel  
16 performed, the results achieved in this litigation, and the purposes of the Fair Credit  
17 Reporting Act, pursuant to which this action was brought. The Settlement Administrator  
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19  
20 Order has expired with no appeal having been taken or sought; or (iii) if any appeal of the Final Approval  
21 Order has been timely filed, the date that the Final Approval Order is finally affirmed by an appellate  
22 court with no possibility of subsequent appeal or other judicial review or the date the appeal(s) or other  
judicial review are finally dismissed with no possibility of subsequent appeal or other judicial review.”  
Stip. of Settlement at ¶ 1.11 (docket no. 38).

1 shall disburse the amounts described in this paragraph to the Class Representative and  
2 Class Counsel, respectively, within ten (10) days after the Effective Date.

3       4. The Settlement Administrator is authorized to draw from the Settlement  
4 Fund up to \$19,900 in reimbursement for its actual expenses. All such expenses shall be  
5 documented in the written accounting that the Settlement Administrator furnishes to  
6 Class Counsel and counsel for defendant pursuant to Paragraph 4.4 of the Stipulation of  
7 Settlement. If the Settlement Administrator's expenses exceed \$19,900, the Settlement  
8 Administrator may seek reimbursement for any excess amounts via motion filed on its  
9 behalf by Class Counsel or counsel for defendant or via stipulated motion of the parties.

10       5. For one (1) year after the Effective Date, the Settlement Administrator shall  
11 maintain the remaining balance of the Settlement Fund, which shall include the amounts  
12 owed to the 495 class members for whom current contact information is unavailable and  
13 the total sum of any checks issued pursuant to Paragraphs 2 and 3 that are returned as  
14 undeliverable or that are not timely cashed (*i.e.*, not endorsed within ninety (90) days  
15 after issuance). In addition, notwithstanding any contrary provision in the Stipulation of  
16 Settlement, for one (1) year after the Effective Date, the Settlement Administrator shall  
17 maintain the dedicated website for this matter ([www.CHClassAction.com](http://www.CHClassAction.com)), on which it  
18 shall post a list of the 495 class members for whom current contact information is  
19 unavailable, and on which it shall indicate how an individual entitled to a share of the  
20 Settlement Fund who has not already received and cashed a check in the applicable  
21 amount may seek payment. The Settlement Administrator may use its discretion in  
22 establishing a reasonable method for such persons to claim their settlement award.

1 During this one-year period, defendant shall include on its web pages or social media  
2 sites a link to, and brief explanation about, the dedicated website for this matter. After  
3 the expiration of this one-year period, any remaining balance of the Settlement Fund  
4 shall be distributed to the National Consumer Law Center as a *cypres* beneficiary, in  
5 accordance with the terms of the Stipulation of Settlement.

6       6. The claims of each member of the Class that were or could have been  
7 asserted in this action are hereby DISMISSED with prejudice, except that:

8           a. Erik Alexander Box, Timothy Sherman Branch, Leonardo Arreguin  
9           Camarillo, Andrew Farley, Michael Anthony Hawley, Darius Marquise Haynes,  
10          Kenneth Wayne Johnson, Bryon Francis Kerker, Patricia Ann Landry, Jason Lee,  
11          Jeffery Leyk, Jerry Lisiecki, Casey Jon McGinnis, Mark Edward Mounts, Stacey  
12          Shay Ramsey, James Brendan Reilly, David Streeter, and Ryan Michael Wilson,  
13          who have opted out of the Class, are not bound by this dismissal; and

14           b. Any individual who did not receive notice of the settlement and who  
15          does not receive a settlement award within the one-year period following the  
16          Effective Date will not be bound by this dismissal.

17       7. Judgment is hereby ENTERED for purposes of Federal Rules of Civil  
18          Procedure 58 and 79, and the time period for filing any notice of appeal shall commence  
19          on the date of entry of this Order and Judgment. Without affecting the finality of this  
20          Order and Judgment, the Court retains continuing and exclusive jurisdiction over the  
21          interpretation, consummation, and enforcement of the Stipulation of Settlement, the  
22          distribution of payments required therein, and the disposition of the Settlement Fund.

1       8. The Clerk is DIRECTED to send a copy of this Order and Judgment to all  
2 counsel of record and to CLOSE this case.

### 3 IT IS SO ORDERED.

4 Dated this 7th day of September, 2017.

Thomas S. Bally

Thomas S. Zilly  
United States District Judge